Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

JOHN D. LANGLEY,
Petitioner-Appellant,

v.

THE ILLINOIS SECRETARY OF STATE,
ILLINOIS HUMAN RIGHTS COMMISSION, AND
ILLINOIS DEPARTMENT OF HUMAN RIGHTS,
Respondent- Appelles.

On Petition for a Writ of Certiorari to the
Appellate Court of Illinois, Fifth District

PETITION FOR WRIT OF CERTIORARI

JAMES B. WHAM
COUNSEL OF RECORD
FOR PETITIONER
WHAM AND WHAM ATTORNEYS
212 EAST BROADWAY
POST OFFICE BOX 549
CENTRALIA, ILLINOIS 62801
PHONE: (618) 532-5621
FAX: (618) 532-5055

St. Louis Law Printing, Inc. 14239 Manchester Rd. Manchester, MO 63011 314-231-4477

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QUESTIONS PRESENTED

1. Can the State of Illinois fail or refuse to provide a forum, as required by the Due Process clause of the Fourteenth Amendment, in which the age discrimination claim of Petitioner based on violation of his Equal Protection rights under the Fourteenth Amendment be considered and determined?

2. Can and did the Illinois Legislature, in creating the Illinois Human Rights Commission, by the terms of the Act prohibit or preclude the Commission from considering Petitioner's Fourteenth Amendment Equal Protection rights in determining his claim of age discrimination against the Illinois Secretary of State under the provisions of the Illinois Human Rights Act?

3. Did the Illinois Human Rights Commission, and the Illinois Appellate Court and the Illinois Supreme Court violate the Fourteenth Amendment Due Process rights of Petitioner in refusing to hear and determine his claim that his employer, Secretary of State, violated his Fourteenth Amendment Equal Protection rights in forcing his retirement against his will in violation of the Illinois Human Rights Act age discrimination provisions?

4. Were the Fourteenth Amendment Equal Protection rights of the Petitioner violated by the Respondent, Illinois Secretary of State, in forcing his retirement against his will under a mandatory age retirement system, while at the same time permitting similarly situated Secretary of State investigators to continue serving beyond the mandatory age retirement provision applicable to them?

PARTIES TO THE PROCEEDING

PETITIONER

John D. Langley

RESPONDENTS

The Illinois Secretary of State

Illinois Human Rights Commission

Illinois Department of Human Rights

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PETITION FOR A WRIT OF CERTIORARI

John D. Langley respectfully petitions for a Writ of Certiorari to review the Judgment and Order of the Appellate Court of Illinois, Fifth District, leave to appeal having been denied by the Illinois Supreme Court.

OPINIONS BELOW

The Opinion of the Appellate Court of Illinois, Fifth District, is an unpublished Supreme Court Rule 23 Order* filed January 16, 2001. (Appendix A, A-1-8)

The Order of the Illinois Appellate Court granting Langley's Petition for Rehearing. (Appendix B, A-9)

The Order of the Appellate Court on considering the Petition for Rehearing, the Answer thereto and the Reply, denying the Motion to Publish and ordering that the Appellate Court's Supreme Court Rule 23 Order entered January 16, 2001 shall stand as the Court's decision in this case. (Appendix C, A-10)

The Order of the Illinois Supreme Court denying Petition for Leave to Appeal, October 3, 2001. (Appendix D, A-11)

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The Order and Decision of the Illinois Human Rights Commission, entered April 23, 1999. (Appendix G, A-16-28)

The Recommended Order and Decision of the Administrative Law Judge, Michael R. Robinson, entered January 16, 1998. (Appendix H, A -29-56)

The Order and Decision of the State of Illinois Human Rights Commission, *In the Matter of: Department of Human rights, et al., Complainants, and State of Illinois, Office of the Secretary of State, Respondent., Charge No: 1984 CF 9002, ALS No: 1164(L),* (Cease and Desist Order), entered August 28, 1985. (Appendix I, A-57-59)

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JURISDICTION

The Illinois Supreme Court Rule 23 Order and Judgment of the Illinois Appellate Court, Fifth District, was entered January 16, 2001. A timely Petition for Rehearing was granted on February 21, 2001. (Appendix B, A-9)

After reconsideration, the Court entered its Final Order on June 26, 2001, stating:

> "This cause has been considered on rehearing and on appellant's motion to publish; and the court having considered the petition for rehearing, answer thereto, and reply to answer and being advised in the premises:
>
> "IT IS THEREFORE ORDERED that motion to publish shall be, and the same hereby is, DENIED.
>
> "IT IS FURTHER ORDERED that this court's Supreme Court Rule 23 order entered on January

16, 2001, shall stand as the court's decision in this cause." (Appendix C, A-10)

A timely Petition for Leave to Appeal to the Illinois Supreme Court was denied without comment October 3, 2001. (Appendix D, A-11)

A timely Motion for Leave to File Motion for Reconsideration of the Supreme Court's Denial of Petition for Leave to Appeal was denied and Mandate issued to the Appellate Court on November 6, 2001. (Appendix E, A-12-13)

The Jurisdiction of this Court is invoked under 28 U.S.C., §1257(a). Also, by reason of the refusal of the Illinois Human Rights Commission and the Illinois Appellate Court, Fifth District, and the Illinois Supreme Court to provide Petitioner a Due Process hearing as required by the Due Process clause of the Fourteenth Amendment to the Constitution of the United States in which to consider and determine Petitioner's claims that his Equal Protection rights were violated by the Illinois Secretary of State contrary to the Fourteenth Amendment.

STATUTORY PROVISIONS INVOLVED

1981 Illinois Vehicle Code, Ill.Rev.Stat. 1981, ch. 95 1/2, par. 2-115. (Appendix U, A-200)

Human Rights Act, Ill.Rev.Stat. 1989, ch. 68, par. 1-101 et seq. (now 775 ILCS 5/1-101 et seq. (West 1998)) (Appendix V, A-201)

Equal Protection clause and Due Process clause of the Fourteenth Amendment to the Constitution of the United States providing:

"§1. ...No state shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

A.

This case involves a claim based on undisputed facts which the Illinois Human Rights Commission, the Illinois Appellate Court and the Illinois Supreme Court have refused to hear. It is a claim that the Fourteenth Amendment Equal Protection rights of Petitioner, John D. Langley, a Secretary of State investigator, have been violated by his employer, the Illinois Secretary of State, in an age discrimination case in violation of the Illinois Human Rights Act.

This case directly presents the issue of whether a state can arbitrarily and irrationally ignore a state employee's claim that his Equal Protection rights were violated by his state employer and terminate his cause of action without violating due process.

This case demonstrates the ease with which a Commission, uncontrolled by proper judicial review, can erroneously avoid decision-making involving high state officers by a simple, unsupported statement rejecting its own jurisdiction to hear the case for no legitimate reason, as is reflected from the concluding words of the Illinois Human Rights Commission's Order and Decision that it"... does not have authority to declare the Secretary's action illegal." (A-28) And ..." no one has authorized us to enforce the Equal Protection Clause of the Constitition" (A-25). This erroneous rejection of its own jurisdiction was made by the Commission while at

the same time knowingly exerting its power and authority over the Secretary of State by its Cease and Desist Order entered in the case of State Of Illinois, Secretary of State, Respondent, Charge No. 1984 CF 9002, ALS No. 1164 (L), 18 ILL. HRC REP. 51. (A-57-59)

The only way found by the Appellate Court to affirm the Commission's denial of Langley's claims against the Secretary of State was to disclaim its own jurisdiction to consider the equal protection claim of Langley and thus, erroneously ignore Langley's Equal Protection and Due Process rights contrary to this Court's consistent admonition as set forth in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, at 431; 71 L.Ed 2d 265 at 276, 277; 102 S.Ct. 1148:

> "As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged.
>
> "...To put it as plainly as possible, the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement."

Langley is entitled to exactly that and he has thus far been denied.

The only reason given for refusing to hear the Equal Protection claims is stated by the Appellate Court's Rule 23 Order affirming the Illinois Human Rights Commission's refusal to hear and decide the claim. The Rule 23 Order at page 5 reads as follows:

> "Langley also argues that the Commission committed error by 'ignoring' the disparate treatment

of Langley as compared to certain other Secretary of State investigators. Langley claims that by forcing his retirement at age 62 while allowing other investigators to stay on the job past age 60, the Secretary of State has violated his equal protection rights,...In its order, the Commission stated that it refused to hear these claims because they were out of its jurisdiction.

"An administrative agency has only those powers specifically granted to it by the legislature...

"The Act grants the Commission authority to render decisions on complaints filed in conformity with the Act. 775 ILCS 5/8-102(G)(West 1998). The Act does not grant the Commission the power to enforce the Code or to hear constitutional claims such as a claim of the violation of equal protection rights...Therefore, we conclude that the Commission was correct in refusing to hear Langley's claims based on the enforcement of the...equal protection rights. We do not make any finding as to the validity of any of these claims but, rather, conclude that we have no jurisdiction to consider them in Langley's appeal of the order of the Commission."

Petitioner contends that the refusal to hear and consider this claim is a violation of the Due Process clause of the Fourteenth Amendment by the Commission and the Illinois Courts, as well as the violation of the Equal Protection clause by the Illinois Secretary of State.

These Federal questions have been timely raised throughout the proceedings, as is apparent from the Appellate Court's Rule 23 Order (A -1-8); the Order and Decision of the Human Rights Commission (A-16-28);

the Recommended Order and Decision of the Administrative Law Judge (A-29-56); and the Order of the Illinois Supreme Court denying Langley's Petition for Leave to Appeal (A-11), as well as the Order denying Langley's Motion to Reconsider the Denial of Petition for Leave to Appeal (A-12-13); and from the excerpts of the record and pertinent portions of the Briefs, Motions and Petitions filed by Langley throughout the proceedings, as appears in the Appendix and as referred to herein.

The undisputed facts upon which Petitioner's contentions are based are as follows:

The Petitioner, John D. Langley, began working as an investigator for the Illinois Secretary of State in November 1966. And after having been terminated in February 1971, because of his political affiliation as a Democrat, was reinstated on May 22, 1972 and thereafter continued to serve as an investigator until August 14, 1990 when he was forced against his will to retire four days after his 62nd birthday, August 10, 1990. Langley was informed by the District Commander of the Secretary of State's office that his service as investigator would end that date because Article 29 of the Collective Bargaining Agreement was being enforced against him. Article 29 reads as follows:

> "All sworn personnel holding the rank of investigator shall retire from service with the Department of Police upon reaching the age of sixty-two (62) or upon completing twenty (20) years of active duty, whichever occurs later."

At the time of his forced retirement, litigation was pending in the Illinois Supreme Court, namely, *The State of Illinois, Secretary of State, Appellee, v. Edward*

Mikusch, et al. Appellants. The case had been decided by the Appellate Court on May 5, 1989 in 181 Ill.App.3d 431, and was pending in the Supreme Court on appeal from the Appellate decision, which was not finally determined by the Supreme Court until October 4, 1990 in 138 Ill.2d 242, 562 N.E.2d 168, 149 Ill.Dec. 704, 51 days after Langley was forced to retire.

The *Mikusch case* involved the issue whether the 70 year retirement age limitation of the Human Rights Act (Ill.Rev.Stat.1981, ch. 68, par. 1-102(A), 1-103(A)(Q), 2-102(A) prevailed over the 60 year mandatory retirement age provision of the Illinois Motor Vehicle Code, Ill.Rev.Stat.1981, ch. 95 1/2, par. 2-115, for Secretary of State investigators.

At the time of Langley's forced retirement, there was also pending the companion case entitled, *State of Illinois, Secretary of State, Respondent, Charge No. 1984 CF 9002, ALS No. 1164(L), 18 Ill.HRC Rep. 51* In that case, there was still in effect on August 14, 1990 a Cease and Desist Order which had been entered by the Illinois Human Rights Commission on August 28, 1985 ordering the office of the Secretary of State to cease and desist from taking any measures to compel or coerce Secretary of State investigators to retire before they attained any age younger than 70 years. (A-57-59)

Langley was subject to and covered by that Order, as were all Secretary of State investigators, including the following ranked investigators: Lieutenant Columbus DiSabato, date of birth October 12, 1923; Major Robert Sandona, date of birth June 25, 1926; and Lieutenant Raymond Wood, date of birth January 12, 1925. These ranked investigators were not subject to the Collective Bargaining Agreement, but were subject to the manda-

tory retirement age of 60 years, which applied to them by virtue of the Motor Vehicle Code provision, heretofore referred to.

Langley was forced to retire against his will in violation of the Cease and Desist Order referred to above, while at the same time DiSabato, Sandona and Wood were permitted to serve as long as they desired until they voluntarily retired. This was disparate treatment which Langley claims violated his Equal Protection rights under the Fourteenth Amendment of the United States Constitution.

Although Langley was not specifically named in the Cease and Desist Order, he was entitled to the same protection by the Cease and Desist Order as was Robert Sandona who also was not specifically named in the Cease and Desist Order and was 64 years of age at the time of Langley's forced retirement at age 62. They both came within the clause of the Cease and Desist Order applying to "any others it (Secretary of State) may employ as investigators." (A-57-59)

The Secretary of State was, therefore, prohibited by the Cease and Desist Order to force Langley to retire against his will notwithstanding the provisions of the Collective Bargaining Agreement. The Cease and Desist Order language is definite and specific that the Secretary can take no measures to compel or coerce investigators to retire before attaining age 70 years. The fact that some investigators might wish to take advantage of the retirement provisions is irrelevant. Langley determined to keep working and was entitled to do so since he was not 70 years old.

On the date of Langley's forced retirement, the Illinois Supreme Court had not yet decided the *Mikusch* case and did not render its decision until October 4, 1990 (138 Ill.2d 242, 562 N.E.2d 168, 149 Ill.Dec. 704). Prior to that date, the Appellate Court on May 5, 1989 (181 Ill.App.3d 431) had determined that the Motor Vehicle Code mandatory retirement age of 60 was the applicable law of mandatory retirement for all Secretary of State investigators, ranked and non-ranked alike. Investigators DiSabato, Sandona and Wood were all more than 62 years of age on May 5, 1989, and the Commission's Cease and Desist Order was the only reason they could legally keep working as Secretary of State investigators.

Langley was entitled to the same protection from forced retirement by that same Cease and Desist Order, yet he was wrongfully required to retire on August 14, 1990 in violation of the Cease and Desist Order immediately upon attaining age 62, while DiSabato, Sandona and Wood, all of whom were more than 64 years of age on that date, were all allowed to continue working by the Secretary of State in accordance with the Cease and Desist Order. Thus, Langley's Equal Protection rights were violated by the disparate treatment he received from the Secretary of State based on age at the time of his discharge.

Even the Administrative Law Judge, who likewise refused to enforce the Equal Protection rights of Langley, specifically recognized in the Recommended Order and Decision that Langley:

> "...is correct that Respondent has not explained why, if the ranked officers were not forced to retire pursuant to Article 29 of the collective bargaining

> agreement, Respondent did not forcibly retire these officers pursuant to section 2-115 of the Motor Vehicle Act when they turned 60 years old." (A-53)

The Appellate Court in avoiding this clearly discriminatory treatment erroneously cites and relies on the 1987 Amendment of the Human Rights Act as a reason for affirming the Human Rights Commission's denial of Langley's claim. (A-3)

That amendment has no effect at all on Langley's Equal Protection claims as a reading of that Amendment clearly reflects:

> "Nothing contained in this Act shall prohibit an employer...from: Imposing a mandatory retirement age for firefighters or law enforcement officers if prior to December 31, 1993, the law enforcement officer or firefighter has attained the age of retirement in effect under applicable state or local law on March 3, 1983[,] and if such retirement action is taken pursuant to a bona fide retirement plan. This paragraph (G)[sic] shall not apply with respect to any cause of action arising under the Illinois Human Rights Act as in effect prior to the effective date of this amendatory Act of 1987." (Ill.Rev.Stat. 1987, ch. 68, par. 2-104(A)(7)(now see 775 ILCS 5/ 2-104(A)(7)(West 1998)). (A-3)

The Human Rights Cease and Desist Order did not "expire" when the Amendment to the Human Rights Act was passed in 1987. Otherwise, the Cease and Desist Order could not have been effective in protecting DiSabato, Sandona and Wood from being discharged under the Appellate Court decision in Mikusch, which

was still the law of Illinois on August 14, 1990, the day Langley was forced to retire.

The 1987 Amendment did not rescind the Cease and Desist Order. The Amendment only permitted, but did not require, other employers of law enforcement officers such as State Police, Deputy Sheriffs, City Policemen (who were not covered by the Human Rights Cease and Desist Order, which Order pertained only to Secretary of State investigators) to enter into agreements establishing mandatory age retirement. All of this was totally ignored by the Human Rights Commission, the Appellate Court, and the Illinois Supreme Court, in refusing to hear and determine Langley's Equal Protection rights claims.

The Human Rights Commission had the power to enforce its Cease and Desist Order against the Secretary of State. Paragraph G of the Amendment (Section 2-104) specifically provides that the Amendment shall not apply "with respect to any cause of action in effect prior to the effective date of the amendatory act of 1987." The *Mikusch* case was still pending on appeal, as was the companion case, and the Cease and Desist Order was still in effect protecting Langley from discharge on August 14, 1990 as it did DiSabato, Sandona and Wood.

The Human Rights Commission admitted in its Order and Decision that the 1987 Amendment to the Human Rights Act did not apply with respect to any cause of action arising under the Human Rights Act in effect prior to December 3, 1987. (A-20) Also, the Supreme Court in *Mikusch* made the same finding.

There was no legitimate reason why the Secretary of State did not restore Langley to his position as soon as

Langley filed his original Complaint on August 29, 1990, only 15 days after he was forced to retire, seeking restoration of his position. (A-203) No legitimate reason can be or was stated by Respondent justifying such obvious disparate treatment of Langley in violation of his Equal Protection rights. This should have been, but was not, considered by the Commission, the Appellate Court and the Illinois Supreme Court.

The Appellate Court as well as the Human Rights Commission completely ignored the Cease and Desist Order as a reading of their respective Orders reflect. This Cease and Desist Order was in effect and should have been considered as highly relevant to the Equal Protection claims of Langley.

There is no case in Illinois, or elsewhere, authorizing a mandatory age retirement requirement to be enforced against only one of the employees while the same common employer allowed all the rest of the similarly situated employees who were, likewise, under the mandatory age retirement requirement to work as long as they wanted contrary to the mandatory retirement age applicable to them.

The Appellate Court and the Commission also erroneously ignored the violation of the Equal Protection rights of Langley regarding the disparate and discriminatory treatment he received from the Secretary of State in comparison to the Secretary's favorable treatment of another non-ranked investigator, Raymond Sanchez.

The Administrative Law Judge, although again refusing to recognize and enforce Langley's Equal Protection rights, specifically held at pages 20 and 21 of the

Recommended Order and Decision:

> "...the record reflects that Sanchez would have satisfied all requirements for the forced retirement provision of Article 29 (i.e. over 62 years of age and 'creditable service date' of August 1, 1993) on August 1, 1993. ...Respondent has not explained why it did not insist that Sanchez retire at the earliest moment after having met all of the requirements for forced retirement under the terms of the 1991 collective bargaining agreement in August of 1993, while it required Complainant to retire a mere four days after Complainant had met all of the criteria for forced retirement under the 1988 collective bargaining agreement." (A-52)

If Langley had received the same treatment as did Sanchez—Langley would never have been forced to retire at age 62. This is age discrimination in violation of his Equal Protection rights beyond doubt and it was not and cannot be explained away.

The Human Rights Commission, the Appellate Court and the Illinois Supreme Court all erroneously failed to recognize and refused to hear Langley's Equal Protection claims of age discrimination. The Commission did have jurisdiction to hear these claims, and in fact, was the exclusive forum in Illinois in which such claims could be heard.

With respect to the forum for the hearing of these Equal Protection claims in age discrimination cases, the Illinois Supreme Court in the case of *Castaneda v. Illinois Human Rights Commission, et al.*, 132 Ill.2d 304, 547 N.E.2d 437, 138 Ill.Dec. 270 (Supreme Court of Illinois Nov. 22, 1989) held at pages 278 and 279 that:

> "...the legislature intended the Commission to be the exclusive vehicle for settling employment discrimination matters. (*Thakkar v. Wilson Enterprises, Inc.* (1983), 120 Ill.App.3d 878, 883, 76 Ill.Dec. 331, 458 N.E.2d 985; *Sanders v. A.J. Canfield Co.* (N.D.Ill.1986), 635 F.Supp. 85, 87; Scott, 605 F.Supp. at 1053.) All of this confirms the legislature's intent to vest the Commission with the authority and ability to decide all matters regarding civil rights violations. The case law and the statutory language positively indicate that the purpose for creating the Commission was to create an administrative agency with special expertise which would efficiently process complaints involving civil rights violations."

Also at page 272 the Court held that:

> "The procedure for redressing acts of employment discrimination by employers (see Ill.Rev.Stat.1987, ch. 68, par. 2-102(A)) is contained in articles 7 and 8 of the Illinois Human Rights Act (hereinafter the Act) (Ill.Rev.Stat.1987, ch. 68, pars. 7-101 through 8-113)."

The fact that the words "equal protection" were not specifically referred to in the Human Rights Act does not preclude the Commission from hearing such claims. To the contrary, the Commission must consider Equal Protection issues. As stated in *City of Springfield v. Carter*, 184 Ill.App.3d 1, 540 N.E.2d 536, 132 Ill.Dec. 796, Ill.App. 4 Dist. (1989) (803-805)

> "...where there is an express grant of authority there is likewise a clear and express grant of power to do all that is reasonably necessary to execute the power or perform duties specifically conferred by

> the enabling statute..." namely, "to...take such action as may be necessary to make the individual complainant whole...action which makes one whole is action which puts the claimant in the position he or she would have been in but for the discriminatory act."

Thus, the Human Rights Commission does have the inherent power and duty to enforce the Equal Protection rights of parties coming before it.

The legislature by not using the term Equal Protection did not preclude the Human Rights Commission from exercising its inherent power and duty to consider Equal Protection rights of parties anymore than did the non-specification of the Fifth Amendment by the Legislature authorize the Commission to ignore Fifth Amendment rights of a party if raised before it. These powers and duties of the Human Rights Commission are inherent in the very creation of the Commission by the legislature.

This Court's recent decision in *Kimel v. Florida Board of Regents*, 528 U.S. 62, 145 L.E.2d 522, 120 S.Ct. 631, (Jan.11, 2000) held that the state could not be sued by a state employee in the Federal Court in an age discrimination case by reason of Eleventh Amendment immunity, but as stated by this Court:

> "Our decision today does not signal the end of the line for employees who find themselves subject to age discrimination at the hands of their state employers...State employees are protected by state age discrimination statutes, and may recover money damages from their state employers, in almost every state of the union.* Those avenues of relief

remain available today, just as they were before this decision."

In the footnote referred to at 145 L.Ed.2d 547 is cited various statutes in the many states, including Ill.Comp.Stat., ch. 775, sec. 5/1-101 et seq. (1998), (the Illinois Human Rights Act). This decision of the United States Supreme Court clearly shows that Langley could not pursue his claim in the Federal Court under the *Kimel* ruling and that the Illinois Human Rights Commission is the correct forum.

Stevens v. Illinois Department of Transportation, 210 F.3d 732 (7th Cir. April 11, 2000) recognizes that suits against departments of state government are equivalent to suits against a state. Langley was, thus, precluded from bringing this case against the Illinois Secretary of State in the Federal Court under the holding of *Kimel*, and therefore, the Illinois Human Rights Commission is the only forum available for Langley's age discrimination case.

B.

The Federal questions sought to be reviewed, which were all determined against Petitioner, were raised in the manner as indicated in the Appendix as follows:

1. On April 24, 1997, prior to commencement of the trial before the Administrative Law Judge, Petitioner's Prehearing Memorandum was filed referring to Petitioner's claim that the treatment he received in comparison to that received by DiSabato, Sandona and Wood violated his Equal Protection rights under the Fourteenth Amendment. (A-62-66)

2. On May 27, 1997, at the hearing before the Administrative Law Judge on Petitioner's Motion for Finding

of Liability in Favor of Langley at the Close of Evidence, Petitioner presented oral argument in support of said Motion on Langley's claim that his Equal Protection rights were violated with respect to the disparate and discriminatory treatment he received compared to the treatment received by DiSabato, Sandona and Wood. (A-67-94)

3. After these positions of Langley were denied by the Administrative Law Judge in the Recommended Order and Decision (A-56), Petitioner then raised the same Federal questions in the Amended Exceptions to Recommended Order and Decision, which was filed with the Human Rights Commission March 17, 1998. (A107-113)

4. After the Human Rights Commission denied Langley's contentions and approved and adopted the Recommended Order and Decision (A-16,28), these same Federal questions were raised by Langley on review in the Appellate Court in Petitioner's Brief (A-114-126). Also, in addition, Langley raised a second Federal question, namely, violation of his right to a hearing of his Equal Protection claims by the Administrative Law Judge and the Human Rights Commission refusing to hear and consider such Equal Protection claims by holding that the Human Rights Commission had no jurisdiction to hear Equal Protection claims. (A-122-126)

5. After the Appellate Court affirmed the Human Rights Commission in its Supreme Court Rule 23 Order, Langley in his Petition for Rehearing again raised both Federal questions. (A-128-143) And upon the granting of the Petition for Rehearing (A-9) filed his Reply to Respondents-Appellees Answer to Petition for Rehear-

ing, and again, raised the two Federal questions. (A-144-163)

6. The Appellate Court after considering the Petition for Rehearing, the Answer of Respondent and Langley's Reply, denied Motion of Langley to publish and ordered that its Supreme Court Rule 23 Order entered January 16, 2001 shall stand as the Court's decision in this cause.

7. Langley then filed his Petition for Leave to Appeal to the Illinois Supreme Court and again raised both Federal questions, namely, the violation of his Equal Protection rights and the violation of his Due Process rights to a hearing of the Equal Protection claim (A-164-174), which Petition for Leave to Appeal was denied by the Illinois Supreme Court without comment. (A-11)

8. Langley then filed his Motion for Leave to File a Motion to Reconsider the Denial of the Petition for Leave to Appeal. Again, Langley raised the two Federal questions (A-175-194), which Motion was denied by Order of the Supreme Court without comment. (A-12,13)

9. Langley's claims for violation of his Equal Protection rights with respect to treatment he received in comparison to that received by Sanchez were preserved throughout the proceedings and denied on each occasion. (A-51-53,56,101-105,108,110,111,116,118-119,122-126,131-138,140,147-151,160-162,165-174,176-185,189-191,193,195-199)

ARGUMENT

REASONS FOR ALLOWANCE OF THE WRIT

I.

LANGLEY HAS BEEN ERRONEOUSLY DEPRIVED OF HIS RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION TO A HEARING OF HIS CLAIM THAT THE ILLINOIS SECRETARY OF STATE VIOLATED HIS EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT, CONTRARY TO THE STANDARD ENFORCED BY THIS COURT

This case in its present posture stands for the proposition that the Due Process Clause of the Constitution can be disregarded by the State Courts on a selective basis in age discrimination cases of State employees against the State.

If the Rule 23 Order of the Appellate Court is allowed to stand, the State of Illinois will have provided no forum in which Langley has an adequate opportunity to raise his Federal Constitutional claims under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States for consideration by any tribunal.

The Illinois Human Rights Commission, the Appellate Court and the Illinois Supreme Court have erroneously refused to hear and decide the Federal Equal Protection questions presented for decision. Such refusal conflicts with the relevant decisions of this Court.

The Appellate Court erroneously affirmed the Human Rights Commission's improper refusal to hear and determine Petitioner's Equal Protection rights claims, and the Illinois Supreme Court has refused to permit Petitioner to appeal that erroneous decision to the Supreme Court. This is in direct conflict with the provisions of the Fourteenth Amendment.

The Human Rights Commission is the only forum in either the State of Illinois or the Federal system with the power and duty to determine age discrimination claims of State employees against their state agency employers.

This is clearly the law of Illinois as determined by the Illinois Supreme Court in the case of *Castaneda v. Illinois Human Rights Commission, et al.*, 132 Ill.2d 304, 547 N.E.2d 437, 138 Ill.Dec. 270 (Supreme Court of Illinois Nov. 22, 1989) cited and discussed at pages 14,15,23 of this Petition.

This Court's recent decision in *Kimel v. Florida Board of Regents*, 528 U.S. 62, 145 L.E.2d 522, 120 S.Ct. 631, (Jan.11, 2000) cited at pages 16,17,23 of this Petition held that the state could not be sued by a state employee in the Federal Court in an age discrimination case by reason of Eleventh Amendment immunity.

Langley is, thus, precluded from bringing this case against the Illinois Secretary of State in the Federal Court under the holding of *Kimel*, and the Illinois Human Rights Commission is the only forum available to determine his claim for violation of his Equal Protection rights in his age discrimination case against the Secretary of State.

When Equal Protection rights are breached in the field of age discrimination matters, these rights must be addressed somewhere—and that somewhere is by the Illinois Human Rights Commission, and the Commission cannot avoid its responsibility and duty by its one-liner disclaimer that, "No one has authorized us to enforce the equal protection clause of the Constitution..." (A-25)

There is no valid reason for denying a state employee the right to raise equal protection of the law questions against his state employer in age discrimination cases. To do so would violate every precept of the Fourteenth Amendment.

This Court in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 71 L.Ed 2d 265, 102 S.Ct. 1148, involved a similar circumstance growing out of the Illinois Supreme Court's disregard for the Equal Protection clause and the right to Due Process hearings under the Fourteenth Amendment.

In reversing the Illinois Supreme Court, this Court held that the decision of the Illinois Supreme Court violated the Fourteenth Amendment Due Process Clause and the Equal Protection Clause. Logan is clearly applicable to Langley. Here the Commission, the Appellate Court and the Illinois Supreme Court have each summarily rejected Langley's argument that Langley's Due Process and Equal Protection rights have been violated by the persistent failure at each level of the Illinois judicial system to provide a Due Process hearing on Langley's Equal Protection claims. This same thing happened to Logan. This Court in reversing the judgment of the Supreme Court of Illinois in Logan and remanding for further proceedings stated that, "What the Fourteenth Amendment does require, "...is an opportunity ...granted at a meaningful time and in a meaningful manner'...'for [a] hearing appropriate to the nature of the case." (Citing cases). It is such an opportunity that Logan was denied." (455 U.S. 422 at 437, 71 L.Ed.2d 265 at 279) And so was Langley. Langley and Logan were both denied the opportunity for a hearing in violation of the Due Process Clause of the Fourteenth

Amendment. They both were denied an opportunity to be heard upon their claimed Equal Protection rights.

In both *Logan* and Langley, the Courts of Illinois have ignored this Court's fundamental statement in *Boddie v. Connecticut*, 401 U.S. 371, 379, 28 L.Ed.2d 113, 120, 91 S.Ct. 780: "...a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." Langley received no opportunity at all to be heard on his Equal Protection claims.

This Court in *Logan* emphatically set forth the well-recognized rule, which was cited and quoted initially in the Statement of the Case. (Petition page 5)

It is apparent from the undisputed facts and admissions of both the Appellate Court and the Commission that Langley's Equal Protection claim under the Fourteenth Amendment was never heard by either the Administrative Law Judge, the Commission, the Appellate Court and the Illinois Supreme Court will not hear it. This vital claim for reinstatement to his position as a Secretary of State investigator, back pay, and back benefits cannot be filed in the Federal Court under the ruling of Kimel and must be heard by the Illinois Human Rights Commission under the ruling of Castaneda.

Logan was remanded by this Court for further proceedings not inconsistent with its Opinion. The same should be the case with Langley as is shown in the following Section II of this Argument.

Logan was followed by a later Illinois case, *Lott v. Governors State University*, 106 Ill.App.3d 851, 436 N.E.2d 569, 62 Ill.Dec. 543, which held at page 546 that

in a similar case to *Logan*, the "plaintiff (Lott) has a protected property interest in his employment discrimination claim and he cannot constitutionally be deprived of that interest by the inaction of the Commission." The Court in coming to that conclusion cited the *Logan* case stating that:

> "The [Logan] majority found that Logan's access to the FEPA's adjudicatory procedures was a property interest protected by the due process clause of the fourteenth amendment." [And that] "Logan was deprived of this property without due process when an administrative delay (for which Logan was not responsible) led to the dismissal of his complaint."

The same thing happened to Langley, as did to both Logan and Lott, in that the Human Rights Commission through no fault of his did not act on his Equal Protection claim, and thus, he was deprived of due process by inaction of the Commission, the Appellate Court and the Illinois Supreme Court.

Lott also stated at 546, 547 that:

> "In *Logan v. Zimmerman Brush Co.*, the Court found that 'Logan is entitled to have the Commission [FEPC] consider the merits of his charge, based on the substantiality of the available evidence, before deciding whether to terminate his claim.'(___U.S. at ___, 102 S.Ct. at 1157.) The same minimum process is due the plaintiff here. Lott is entitled to have the Department of Human Rights and the Human Rights Commission (the successors to the FEPC) consider the merits of his discrimination charge...

> "We find that the State and its agencies are 'employers' as defined in section 2-101(B)(1)(c) of the IHRA (Ill.Rev.Stat.1980 Supp., ch. 68, par. 2-101(B) (1)(c)), and that the State as an employer is capable of committing a civil rights violation, thereby subjecting itself to the procedures set out in the IHRA. The Court of Claims is not the proper forum for plaintiff's employment discrimination charge. See Ill.Rev.Stat.1980 Supp., ch. 68, par. 8-111(D)(no court has jurisdiction over alleged civil rights violations except as provided by law)."

Thus, the Human Rights Commission was the only forum having jurisdiction to determine the Equal Protection claims of employment discrimination filed by Langley.

In *Easter House v. Felder* 879 F.2d 1458 (7th Cir. 1989), the Court stated at page 1467 with reference to Logan that:

> "...the Court believed that the plaintiff was challenging an inadequate "established state procedure' that destroys his entitlement without according him proper procedural safeguards." 455 U.S. at 436, 102 S.Ct. at 1158. The Court noted that 'it is the state system itself that destroys a complainant's property interest, by operation of law, whenever the Commission fails to convene a timely conference...' 455 U.S. at 436, 102 S.Ct. at 1158."

Similarly, in Langley it was an inadequate established State procedure that destroyed his entitlement to continue working without according him proper procedural safeguards in that the Commission, the Appellate Court, and the Supreme Court of Illinois refused to accord him a Due Process hearing on his claim that his

Equal Protection rights were violated by the disparate treatment received by him from the Secretary of State.

II.

LANGLEY HAS BEEN ERRONEOUSLY DEPRIVED OF HIS RIGHTS TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, WHICH DEPRIVATION WAS IGNORED BY THE HUMAN RIGHTS COMMISSION, THE ILLINOIS APPELLATE COURT AND THE ILLINOIS SUPREME COURT, WHICH DEPRIVATION APPEARS FROM THE UNDISPUTED FACTS AND CONTENTIONS OF LANGLEY AS FOLLOWS:

1. The common employer, the Secretary of State, was charged with administering a mandatory age retirement system applicable to all Secretary of State investigators, both ranked and non-ranked, with fairness and impartiality as required by the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

2. There was no rational, non-arbitrary reason asserted by the Secretary of State in support of the unequal, disparate and discriminatory treatment rendered Langley in comparison to DiSabato, Sandona and Wood.

3. Another non-ranked investigator, Raymond Sanchez, also received more favorable treatment by the Secretary of State than did Langley, who was denied the same treatment for no legitimate reason.

4. The Commission, the Appellate Court and the Illinois Supreme Court all ignored the fact that neither

the Secretary of State nor anyone else made any showing or legitimate contention that this disparate treatment and discrimination against Langley "rationally furthers some legitimate, articulated state purpose" in applying the mandatory age retirement provision applicable to him, while at the same time not applying the mandatory age provision applicable to DiSabato, Sandona, Wood and Sanchez. Any attempt to justify such disparate and discriminatory treatment is nothing but an exercise of sophistry at its worst.

5. The Commission, the Appellate Court and the Illinois Supreme Court ignored the law on the issue of Equal Protection under the Fourteenth Amendment as set forth in the following cases cited by Petitioner throughout the proceedings:

In *Ciechon v. City of Chicago*, 686 F.2d 511 (7th Cir. 1982) the Court held at pages 522-523:

> "Equal protection demands at a minimum that a municipality must apply its laws in a rational and nonarbitrary way. *Yick Wo v. Hopkins*,... This requires a showing that its application of the law 'rationally furthers some legitimate, articulated state purpose and therefore does not constitute invidious discrimination.' ...We have consistently applied these principles which are at the heart of the equal protection guarantee to protect against arbitrary government conduct." (Emphasis added)

In *United States v. Falk*, 479 F.2d 616 (7th Cir. 1973), at page 618 the Court stated:

> "...The promise of equal protection of the laws is not limited to the enactment of fair and

impartial legislation, but necessarily extends to the application of these laws."

In *Northwestern University v. Evanston*, 221 Ill.App.3d 893, 582 N.E.2d 1251, 164 Ill.Dec. 307 at 310 the Court stated:

"Under principles of equal protection the classification is invalid if it is arbitrary and without a reasonable basis."

Clearly, no reasonable basis exists to treat ranked investigators more favorably in age discrimination cases from non-ranked investigators when age alone is the criteria of the mandatory age retirement system applicable to all investigators alike. There was no criteria pertaining to physical condition, job performance, or duty requirements—age was the only reason for forced retirement and that reason applied to all.

6. In the separate opinion of Justice Blackman, with whom Justice Brennen, Justice Marshall and Justice O'Connor join, it is stated that Logan also raised an Equal Protection claim, which is the same situation involved in Langley's case.

Logan states after analyzing the particular facts that, "...The Illinois scheme also deprives him of his Fourteenth Amendment right to the equal protection of the laws", and that:

"...This Court still has an obligation to view the classificatory system, in an effort to determine whether the disparate treatment accorded the affected classes is arbitrary. Rinaldi v. Yeager, 384 US, at 308, 16 L Ed 2d 577, 86 S Ct 1497 ('The Equal Protection Clause requires more of a state law than

non-discriminatory application within the class it establishes'). Cf. U.S. Railroad Retirement Bd. v. Fritz, 449 US, at 178, 66 L Ed 2d 368, 101 S Ct 453.

"...[T]he Equal Protection Clause 'imposes a requirement of some rationality in the nature of the class singled out' [And that] "The State's rationale must be something more than the exercise of a strained imagination." (455 U.S. at 442, 71 L.E.2d at 282)

There could be no more "strained imagination" than an attempt to justify the playing of favorites in the administration of a mandatory age retirement system.

There is no case in the Country authorizing a mandatory age retirement requirement to be enforced by a common employer against only one of the employees while the same common employer allows all the rest of the similarly situated employees who are likewise bound by a mandatory age retirement requirement to work as long as they desire beyond the mandatory retirement age applicable to them. No governmental officer, including the Secretary of State, should be permitted to engage in such unrestrained, bureaucratic, improper selectivity with impunity.

The treatment of Langley by the Secretary of State, the Commission and the Courts of Illinois is irrational, unconstitutional selectivity at its worst, and it should never by permitted to happen again.--but it will happen again and again in Illinois as it did in Logan and now in Langley, until the Illinois Courts acknowledge and comply with this Court's standards in enforcing, instead of ignoring, Equal Protection and Due Process Rights of the People.

CONCLUSION

Petitioner, John D. Langley, respectfully requests that this Honorable Court grant the Petition for Certiorari.

Respectfully submitted,

James B. Wham,
Counsel of Record for
Petitioner, John D. Langley